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IRS Audits of Governmental 457 Plans

For the last couple of years, the IRS has stressed their commitment to auditing governmental plans. We are aware of several governmental plan sponsors who were notified that their plan would be audited in 2004 or 2005.

This past year the IRS has told such groups as NAGDCA of a number of problems that they have identified by auditing 457 plans and has cautioned plan sponsors to make sure that they had their plans in good order. Specifically, the IRS has uncovered numerous problems when employers have multiple 457(b) plans or use multiple providers. Since the regulations require that all plans offered by one employer be treated as one plan, the plans must have identical provisions and, must be administered exactly the same. The most common problems the IRS is finding are as follows:

- Excess contributions, especially where there are multiple plans that must be treated as one plan or multiple providers.
- Catch-up contributions allowed without underutilized amounts.
- Not enforcing the "first day of the month" requirement for contribution elections and changes.
- Allowing distributions in situations that do not constitute a genuine unforeseeable emergency.
- Not operating the plan in compliance with the plan document.
- Not coordinating the maximum loan amount with all other plans offered by the employer.
- Not defaulting loans as required under IRC section 72.

Given the fact that we anticipate even more IRS audits of governmental plans in 2005, we urge plan sponsors to pay attention to their plan governance policies, particularly in the above areas. Not only should they exclusively use one plan document regardless of the number of plans or providers, their administrative and operational rules must be identical.

On a related note, the participation in the Great-West Retirement Services Plan Fiduciary Webinar for Governmental Plan Sponsors on December 9, 2004 was very high, and we have had many requests for it to be repeated. A second session for this popular and timely topic will be scheduled soon.

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